

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(6700 Dogwood Road)		
2 nd Election District	*	OFFICE OF ADMINISTRATIVE
4 th Councilmanic District		
Marvin R. Bell & Eric L. Dorsey	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	CASE NO. 2013-0269-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Hearing filed by Marvin R. Bell and Eric L. Dorsey, legal owners. The Petitioners are requesting a finding, pursuant to § 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) that a new church located in a DR 5.5 zone will satisfy the requirements for a Residential Transition Area (RTA) exception under B.C.Z.R. §1B01.1.B.1.g.6 . The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing held for this case was Marvin and Jill Bell, Timothy Kotroco and Rick Richardson from Richardson Engineering, LLC, the firm that prepared the site plan. There were no Protestants or interested citizens in attendance, and the file does not contain any letters of protest or opposition. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

Zoning Advisory Committee (ZAC) comments were received from Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). These comments will be discussed at greater length below.

Testimony and evidence revealed that the subject property is approximately 3.29 acres and

is zoned DR 5.5. The Petitioners are affiliated with the Church of Christ, which is presently located off of Dogwood Road less than ¼ mile from the subject property. The Church has outgrown its current facility, and purchased this property last year in order to construct a new sanctuary, gymnasium and parking facilities, as shown on the site plan prepared by engineer Rick Richardson. Exhibit 1. The church is permitted as of right in the DR 5.5 zone, and no variances are sought. The only zoning relief required is a finding that the project will satisfy the requirements for an RTA exception.

A new church is exempt from the RTA requirements set forth in the B.C.Z.R., provided that the proposed improvements are planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained and that said plan can otherwise be expected to be compatible with the character and general welfare of the surrounding residential premises. B.C.Z.R. §1B01.B.1.g.6.

As noted at the outset, the church is currently located in the same community (Richardson Heights) at 6730 Dogwood Road. The present sanctuary is an integral part of the community, and there is no reason to believe that the new facility proposed herein would not also be “compatible” with the character of this community; especially since it is the same community. It is generally understood and agreed that churches are a relatively innocuous land use category, and the subject property is bordered by an established community of single family dwellings constructed in the 1950’s and Featherbed Lane Elementary School. Exhibit 1.

In these circumstances, I believe the proposed 2 story church (22,990 sf.) and 1 story gymnasium (8,250 sf.) will be compatible with the surrounding residential community. Mr. Richardson (who was accepted as an expert) testified and opined via proffer that the Petitioners would satisfy the requirements for the RTA exception, and I concur. It is important to note that

neither of the ZAC comments submitted expressed concern that the church would be incompatible with the community or detrimental to the welfare of the surrounding residential premises.

Richardson Road Connection

In their ZAC comments, both DOP and DPR have suggested that the Petitioners be required to construct and extend Richardson Lane through the site. As shown on the site plan and aerial photos (Exhibits 1-3), Richardson Road extends from Woodlawn Drive to the site, and then continues on the other side of Petitioner's property where it adjoins Featherbed Lane Elementary School. Mr. Richardson testified the road was constructed in the 1950's, and has been "disconnected" since that time. Whether or not it makes sense to connect the roadway as proposed by the County is not important for present purposes. Assuming County officials desire to make the connection, the proper course would be to file a condemnation suit to acquire the land and thereafter employ the procurement and bidding procedure to engage a contractor to construct the roadway and appurtenant improvements. The Petitioners in this case cannot be expected to bear these costs (which will be significant), and their petition cannot be denied if they do not accede to such requests.

As an initial matter, both Marvin Bell (a church official) and Mr. Richardson testified that the project cannot be completed if Richardson Road is extended through the site. Mr. Bell noted that the proposed gym (used primarily by children) would be separated from the church sanctuary by the new roadway, which would create both safety and logistical concerns. Mr. Bell testified the church would not have purchased this property if it had known of the County's plans.

There are also serious legal concerns raised by the County's request. The church, as noted earlier, is permitted as of right in the zone and no variances are being sought. Thus, it is unclear whether the County could condition approval upon the terms stated, at least at this juncture. In

this regard, a zoning hearing is fundamentally different than a development hearing, and it is in the latter that local governments seek to condition their approval upon an applicant's dedication of land or completion of public improvements.

And in a recent case, the Supreme Court has confirmed that the constitution imposes strict limitations on these practices. Koontz v. St. Johns River Dist. (U.S. Fla. June 25, 2013). In Koontz, the court held that a local government is entitled to require the dedication of land or expenditure of funds (here, the County's demand involves both) provided that the city makes an individualized determination that what is being requested is "related both in nature and extent to the impact of the proposed development," which it described as a "rough proportionality" test.

As shown on the site plan, the Petitioners propose to use Dogwood Road for ingress/egress, and Mr. Richardson testified that the Petitioners expect they will be required to dedicate certain property or make certain roadway improvements at the point of ingress/egress. This will be where the applicants' proposal imposes a "social cost" upon the community. But the Richardson Road connection sought by the County is located to the north of the site, and the Petitioners do not propose to use either portion of existing Richardson Road for the project. As such, only if the road is connected will there be a "social cost" to the community, consisting of not only traffic from the church but also motorists diverted from Dogwood Road looking for shortcuts through the community, as recognized in the DOP's ZAC comments.

In light of the above, I do not believe that the Petitioners can be required to dedicate land and construct the connection of Richardson Road, and the granting of the petition will not be subject to this condition.

Pursuant to the advertisement, posting of the property, and public hearing, and after considering the testimony and evidence offered, I find that Petitioners' Special Hearing request

should be granted, and the site plan (Exhibit 1) is approved.

THEREFORE, IT IS ORDERED, this 11th day of July, 2013 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), be and is hereby GRANTED, based upon a finding that the proposed improvements are planned in such a way that compliance, to the extent possible with RTA use requirements, will be maintained, and that the plan is compatible with the character and general welfare of the surrounding residential premises.

The relief granted herein shall be subject to the following:

- Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
- Prior to building permit issuance, Petitioners must submit for approval building and sign elevations, and a landscape plan that includes a vegetative buffer around the proposed parking lot.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:sln